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LORNA L. NOTSCH Tenant/Petitioner, v. CARMEL PARTNERS Housing Provider/Respondent	Case No.: RH-TP-06-28690 *In re:* 1833 Summit Place, N.W. Unit No. 101

FINAL ORDER

I. Introduction

On July 5, 2006, Tenant/Petitioner Lorna Notsch filed a tenant petition ("TP") 28,690. With the consent of Housing Provider and this administrative court, Tenant filed an amended petition on January 29, 2007. The amended petition alleged that: (1) the rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Act of 1985 (the "Rental Housing Act" or the "Act"); (2) 180 days had not passed since the last rent increase; (3) a proper 30 day notice of rent increase was not provided before Tenant's rent increase became effective; (4) Housing Provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division ("RACD");[1] (5) the

[1] On October 1, 2007, the rental housing functions of the Department of Consumer and Regulatory Affairs were transferred to the Department of Housing and Community Development ("DCHD"). The RACD functions were assumed by the Rental Accommodations Division of DCHD. The transfer does not affect any of the issues in this case.

rent ceiling filed with the RACD for the unit is improper; (6) a rent increase was taken while the unit was not in substantial compliance with the District of Columbia Housing Regulations; (7) services and/or facilities provided in connection with the rental of the unit have been permanently eliminated; and (8) services and/or facilities provided in connection with the rental of the unit had been substantially reduced.

The parties and their attorneys appeared for a hearing on March 21, 2007. Tenant testified on her own behalf and presented testimony from two housing inspectors from the Department of Consumer and Regulatory Affairs, Ronald Butler and Thomas Smoot, from Shelton Gordon, the property manager for the Housing Accommodation, and Gene Santomartino, a consultant retained by Housing Provider to arrange filings with the Rent Administrator. Housing Provider's sole witness was its property manager, Mr. Gordon. Tenant introduced 35 exhibits, of which 31 were received in evidence.[2] Housing Provider did not introduce any exhibits.

For reasons set forth below, I conclude that Tenant has proven that three of her rent increases were illegal. I award Tenant refunds and interest totaling $2,357.17, and roll back Tenant's rent to $1,029 per month as of March 21, 2007. Although I conclude that Tenant experienced a substantial reduction in services and facilities, the accompanying reduction in Tenant's rent ceiling did not affect Tenant's rent, so Tenant receives no award on account of her services and facilities claim.

[2] A list of the exhibits received in evidence is set forth in the Appendix.

II. Findings of Fact

A. Rent and Rent Ceiling Increases

Tenant, Lorna Notsch, leased the rental unit, Apartment 101, at 1833 Summit Place, N.W., on June 19, 2003. The lease, effective from July 1, 2003 through June 30, 2004, set a rent of $1,000 per month and stated that the rent ceiling was $1,352.00. Petitioner's Exhibit ("PX") 101.

The rent ceiling stated in the lease was based on an Amended Registration filed with the Rent Administrator on March 31, 2003, implementing a rent ceiling increase of $726 from $626 to $1,352. PX 131. The effective date of the rent ceiling adjustment was March 1, 2003. *Id.* The rent ceiling increase derived from a vacancy increase under Section 213 of the Rental Housing Act, D.C. Official Code § 42-3502.13(a)(2) (2001). The comparable unit used for the vacancy increase was No. 103 at 1821 Summit Place, N.W. *Id.* This unit was in a different building, but purportedly had the same dimensions and layout as Tenant's apartment. PX 140.

On August 28, 2003, Housing Provider filed a Certificate of Election of Adjustment of General Applicability with the Rent Administrator that misstated the rent applicable to Tenant's unit. The Certificate listed Tenant's previous and present rent as $596. PXs 130, 139. This was the rent that Housing Provider had charged to the prior tenant in the apartment. PX 128. The Certificate documented an increase of $26 in Tenant's rent ceiling from $1,352 to $1,378, implementing the annual adjustment of general applicability.[3]

[3] Prior to the amendment of the Rental Housing Act in August 2006, annual adjustment of general applicability applied to rent ceiling increases. The District of Columbia Court of Appeals described this adjustment as follows: "The adjustment of general applicability allows

Housing Provider corrected the mistake concerning Tenant's rent in a Certificate of Election of Adjustment of General Applicability filed with the Rent Administrator on August 31, 2004, which stated the prior and present rent for the apartment to be $1,000. The August 2004 Certificate implemented an increase in Tenant's rent ceiling of $37, from $1,378 to $1,415. PX 148.

On October 28, 2004, Housing Provider served a Notice of Increase in Rent Charged on Tenant, announcing an increase in Tenant's rent from $1,000 to $1,029 per month, effective December 1, 2004. The Notice implemented a portion of the $37 rent ceiling increase documented in the August 31, 2004, filing and attributable to the 2004 annual adjustment of general applicability. PX 112.[4]

In July, 2005, Housing Provider again increased Tenant's rent ceiling. On July 27, 2005, Housing Provider served Tenant with a Notice of Increase in Rent Ceiling, increasing the rent ceiling by $36 based on the 2.7% annual adjustment of general applicability for 2005. PX 113. On July 28, 2005, Housing Provider filed a Certificate of Election of Adjustment of General

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housing providers the option to increase rent ceilings annually in order to keep up with inflation. The adjustment 'shall be equal to the change during the previous calendar year, ending each December 31, in the Washington, D.C. Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items during the preceding calendar year,' subject to a cap of ten percent. D.C. Code § 42-3502.06(b). It is the RHC's [Rental Housing Commission's] duty to determine the amount of the general applicability adjustment annually and publish it by March 1 of each year. *See id.* and D.C. Code § 42-3502.02(a)(3). The adjustment is published annually in the D.C. Register with an effective date of May 1." *Sawyer Prop. Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 104 (D.C. 2005) (footnotes omitted).

[4] Prior to the 2006 amendment, the Rental Housing Act permitted housing providers to increase rents periodically by implementing all or part of a rent ceiling adjustment that had been previously taken and perfected. The Act allowed housing providers to implement only part of a particular rent ceiling adjustment and to delay implementation of the unused portion. D.C. Official Code § 42.3502.08(2) (2001).

Applicability with the Rent Administrator documenting the rent ceiling increase, effective August 1, 2005.

On September 30, 2005, and again on October 27, 2005, Housing Provider filed Amended Registrations with the Rent Administrator to document an increase of $162 in Tenant's rent ceiling from $1,451 to $1,613. PXs 137, 138. The rent ceiling increase was attributed to a vacancy increase under Section 213(a)(2) of the Act, D.C. Official Code § 42-3502.13(a)(2). Tenant occupied the unit throughout 2005. Housing Provider did not offer any explanation for taking a vacancy rent ceiling increase at a time when the unit was occupied.

On December 27, 2005, Housing Provider implemented a $50 rent increase, effective February 1, 2006 (the "February 2006 Rent Increase"), using a portion of the March 2003 rent ceiling increase of $726. PX 114. The Notice of Increase in Rent Charged served on Tenant stated that Tenant's rent ceiling on the date of the rent increase was $1,451. The Rent Administrator's record of filings, PX 120, reflect that an affidavit of service was filed with the Rent Administrator on January 30, 2006, although the affidavit itself was not offered into evidence. PX 120. The Rent Administrator's record contains no entry of an amended registration by Housing Provider to record the rent increase. PX 120. Accordingly, I find that Housing Provider did not file an amended registration to document the February 2006 Rent Increase.

On June 6, 2006, Housing Provider implemented a $272 rent increase, effective August 1, 2006 (the "August 2006 Rent Increase"), using a further portion of the March 2003 rent ceiling increase of $726.[5] The Notice of Increase in Rent Charged served on Tenant stated that

[5] See n. 4 *supra*.

Tenant's rent ceiling on the date of the rent increase was $1,508. The Rent Administrator's record of filings, PX 120, reflects that an affidavit of service was filed with the Rent Administrator on June 29, 2006, although the affidavit itself was not offered into evidence. The Rent Administrator's record contains no entry of an amended registration by Housing Provider to record the rent increase. PX 120. Accordingly, I find that Housing Provider did not file an amended registration to document the August 2006 Rent Increase.

Tenant refused to pay the August 2006 rent increase. Housing Provider did not withdraw its demand for increased rent but also did not take legal action to enforce the rent increase.

On December 28, 2006, Housing Provider implemented a $67 rent increase, effective February 1, 2007, based on the adjustment of general applicability for 2006. The Notice of Increase in Rent Charged stated that the "current rent charged" was $1,079, and the "new rent charged" was $1,146. The Rent Administrator's records show no filing of a Certificate of Election of Adjustment of General Applicability to document this rent increase. In addition, as of January 31, 2007, Housing Provider had not filed with the Rent Administrator a sample copy of the notice or an affidavit of service, as required by the Rental Housing Regulations. 14 District of Columbia Municipal Regulations ("DCMR") 4105.4(d). PX 120.

B. Maintenance and Repair Complaints

The tenant petition asserted that Housing Provider implemented a rent increase at a time when the rental unit was not in substantial compliance with the D.C. Housing Regulations and that the Housing Provider substantially reduced the services and/or facilities provided in connection with the rental unit. At the hearing, Ms. Notsch testified that she experienced continuing maintenance and repair problems in her unit. She supplemented her own testimony

with the testimony of two inspectors from the Department of Consumer and Regulatory Affairs and maintenance documents that were introduced into evidence.

Ms. Notsch described a number of problems with her apartment, including lack of heat, a kitchen sink that periodically backed up and overflowed, a leak in the ceiling that caused paint to peel and plaster to flake in her bathroom and kitchen, and a defective stove. Although she stated that she complained of these problems, she was unable to provide the dates or details of specific complaints or the names of the persons with whom she lodged the complaints. However, many of the problems were documented in emails and maintenance records that Tenant introduced into evidence. PXs 111, 145.

In November, 2004, Tenant complained that her kitchen sink did not drain properly and the paint in the bathroom was peeling, among other issues. PX 145 (11/29/04 Work Order). Housing Provider made repairs, but the bathroom paint continued to peel. Work orders, emails, and memos record problems with paint peeling in the bathroom on January 6, 2005 (PX 145), May 2, 2005 (PX 145), June 6, 2005 (PX 145), and August 11, 2005 (PX 149). Housing Provider made repairs and painted the bathroom in August 2005.

The paint and plaster problems extended to the bedroom as well as the bathroom. But the problems in the bedroom were neither as prolonged nor as well-documented as those in the bathroom. Tenant observed bubbling in the bedroom ceiling in the late spring of 2006. She was told by one of the building employees that the roof had been improperly installed and that she would have to wait until it dried out. Photographs that she took in June of 2006 showed peeling paint. PX 109. Housing Provider repaired the damage in late September 2006, although

photographs taken following the repairs indicated either that the repairs were sloppy or the problem was not entirely fixed. PX 110.

Tenant also complained of ongoing problems with her kitchen sink. Work requests on November 29, 2004, and January 10, 2005, reported the kitchen sink clogged. On March 3, 2006, the sink backed up and overflowed, covering Tenant's kitchen floor with a noisome residue that required many hours of work to clean up. PX 111. Housing Provider's maintenance superintendent proposed to clean the drainage line, but never followed through with the project. PX 111. The sink continued to back up periodically and regurgitate ooze. As a consequence, Ms. Notsch avoids using the sink whenever it threatens a backup and will wash dishes in the bathroom. But she acknowledged that she has not reported any problems with the sink to the building management since the January 2005 incident.

Ms. Notsch complained of continuing problems with her stove and that her oven did not work. The documents in evidence include a single work order of May 2, 2005, noting that "the stove does not work." The work order reflects that the job was completed on the same day. PX 145. There are no other references to the stove or oven in the documents in evidence. Inspector Butler testified that he did not recall any complaint about the stove.

Tenant also testified that the radiator in her living room did not work and that periodically there would be no heat at all in her apartment. A work order and call center service request document a single complaint about this condition on February 1, 2006. The call center request indicates that repairs were "completed." Ms. Notsch testified that the radiator worked for one week but did not work after that.

In addition to these problems, work orders in evidence reflect problems with the alignment of the door, a clogged toilet, defective blinds in the living room and bedroom, outlets, and flickering lights. The work orders indicate that these conditions were repaired or resolved.

In August of 2006, after the initial tenant petition was filed, Ms. Notsch's apartment was inspected by Ronald Butler, a DCRA building inspector, and Thomas Smoot, a DCRA fire inspector. Inspector Butler observed peeling paint in the bedroom and cracks in the ceiling. The front door did not close firmly and the window in the living room was difficult to open. He cited the Housing Provider for certain violations that he described as "minor in nature." No notice of violations was introduced in evidence. Work orders reflect repairs of these defects on September 22 and September 26, 2006. PXs 140, 145. Inspector Smoot testified that he did not remember finding any fire code violations, although he recalled that one of the windows opened with difficulty.

In addition to the problems in her apartment, Ms. Notsch described problems in the common areas of the building. She submitted photographs showing the trash room filled with junk and old furniture, a condition that arose once or twice a month according to her testimony. PX 106. But she admitted that she never complained of the problem to management. Tiles on the floor of the laundry room were missing. PX 107. Ms. Notsch testified that the security code for the building had not been changed in years.

Housing Provider's property manager, Shelton Gordon, acknowledged these conditions, but did not believe they were serious or dangerous. He testified that the trash room would fill up whenever tenants moved out but that Housing Provider would arrange for a bulk trash pickup and the bulk items would be removed within a few days. Although the security code had not

been changed for more than a year, it was changed periodically and the only breaches of security that he was aware of arose from prying the back door with a crowbar. The laundry room was refurbished in August, 2006.

III. Conclusions of Law

A. Jurisdiction

This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act ("DCAPA"), D.C. Official Code §§ 2-501 – 510, and the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. As of October 1, 2006, the Office of Administrative Hearings ("OAH") has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03(b-1)(1).

B. Tenant's Claims Involving Rent and Rent Ceiling Increases

Five of Tenant's claims involve the propriety of rent increases, rent ceiling increases, or the documentation of those increases with the Rent Administrator. Boxes checked in the tenant petition assert that: (1) the rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Act; (2) 180 days had not passed since the last rent increase; (3) a proper 30 day notice of rent increase was not provided before Tenant's rent increase became effective; (4) Housing Provider failed to file the proper rent increase forms with the RACD; and (5) the rent ceiling filed with the RACD for the unit is improper. Tenant challenged all Housing Provider's rent increases within three years of the

filing of her tenant petition, Two of these rent increases, the February 2006 and August 2006 Rent Increases, implemented portions of the $726 vacancy rent ceiling increase that Housing Provider took in March 2003. I will begin with an analysis of these two rent increases and the rent ceiling adjustment on which they are based.

Tenant filed her initial tenant petition on July 5, 2006, one month prior to the effective date of the 2006 amendments to the Rental Housing Act that abolished rent ceilings. *See* 53 D.C. Reg. 6688 (Aug. 18, 2006). Housing Provider's acts prior to August 5, 2006, are covered by the prior Act, under which "the principal protections for tenants are the imposition of a rent ceiling and the prohibition against upward adjustment of that ceiling except on specifically enumerated grounds." *Winchester Van Buren Tenants Ass'n v. D.C. Rental Hous. Comm'n*, 550 A.2d 51, 55 (D.C. 1988), quoted in *Sawyer Prop. Mgmt., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 103 (D.C. 2005).

The March 2003 rent ceiling adjustment was based on a vacancy adjustment that increased the rent ceiling to that of "a substantially identical rental unit in the same housing accommodation" under Section 213 of the Rental Housing Act, D.C. Official Code § 42-3502.13(a)(2) (2001). Here, the comparable unit was No. 103, at 1821 Summit Place, a different building that was part of the same apartment complex. This was permissible under the Rental Housing Act. *See Marshall v. D.C. Rental Hous. Comm'n*, 533 A.2d 1271, 1277 (D.C. 1987) (holding that a rental unit in a different building in the same housing complex may be a comparable unit for purposes of a vacancy increase). Because the vacancy increase took place more than three years before the tenant petition was filed, Tenant is barred from challenging the validity of the rent ceiling adjustment itself. *Kennedy v. D.C. Rental Hous. Comm'n*, 703 A.2d 94, 97 (D.C. 1998) (holding that the Rental Housing Act's statute of limitations, D.C. Official

Code § 42-3502.06(e) "bars any investigation of the validity of . . . adjustment in either the rent levels or rent ceiling, in place more than three years prior to the date of the filing of the tenant petition"). But even if the rent ceiling adjustment arose more than three years before the tenant petition was filed, it must have been properly taken and perfected in order to support a rent increase that is challenged within the limitations period. *Grant v. Gelman Mgmt. Co.*, TP-27,995 (RHC Mar. 30, 2006) at 10.

A housing provider is allowed to take a vacancy rent ceiling adjustment without approval of the Rent Administrator, provided the housing provider files an amended registration form to document the increase and gives notice to the tenant. 14 DCMR 4204.9. To perfect the vacancy rent ceiling adjustment, the amended registration form must be filed within 30 days of when the rental unit becomes vacant. *Sawyer,* 877 A.2d at 109.

In light of these requirements, I conclude that Housing Provider's March 2003 rent ceiling adjustment was properly taken and perfected. Housing Provider filed an Amended Registration Form on March 31, 2003, certifying a "date of change" of March 1, 2003. PX 131. The form complied with the regulatory requirements of 14 DCMR 4204.9, 4204.10, and 4207.5. It identified the unit, set forth the amount of the adjustment and the prior and new rent ceilings, and was filed within 30 days of when Housing Provider was first eligible to take the adjustment. Tenant was given notice of the new rent ceiling in the lease, which stated the rent ceiling to be $1352.[6]

[6] Under 14 DCMR 4207.5, a housing provider is required to satisfy the notice requirements of 14 DCMR 4101.6 as a precondition for perfection of a vacancy rent ceiling adjustment. 14 DCMR 4101.6 requires that a housing provider who files a Registration/Claim of Exemption Form must first "post a true copy of the . . . form in a conspicuous place at the rental unit . . . or . . . mail a true copy to each tenant of the rental unit . . . . " The application of this notice

It does not follow, though, that Housing Provider properly implemented the rent increases in February 2006 and August 2006 that derived from the 2003 vacancy rent ceiling adjustment. In both cases Housing Provider complied with the Rental Housing Regulations by serving Tenant with a Notice of Increase in Rent Charged more than 30 days before the prospective rent increase. 14 DCMR 4205.4(a). The Notices of Increase in Rent Charged states the amount of the rent adjustment, the amount of the adjusted rent, the date of the rent increase, the date and authorization of the rent ceiling adjustment from which the rent adjustment was derived, and a certificate that the rental unit was in substantial compliance with the Housing Regulations. 14 DCMR 4205.4. PXs 114, 115. Housing Provider filed affidavits of service with the Rent Administrator documenting service of the notices. 14 DCMR 4205.4(d). But Housing Provider did not file an Amended Registration with the Rent Administrator to document the implementation of either the February 2006 or the August 2006 rent increases.

The Housing Regulations require a housing provider to file an Amended Registration whenever a rent increase arising from a vacancy is implemented. 14 DCMR 4103.1 provides:

> Each housing provider of a rental unit or units covered by the Act shall file an amendment to the Registration/Claim of Exemption form provided by the Rent Administrator in the following circumstances:
>
> * * *
>
> (e) Within thirty (30) days after the implementation of any vacant accommodation rent increase pursuant to § 213 of the Act.

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requirement to a vacant apartment is nonsensical because there is no tenant to view the form in the apartment or to receive it by mail. I conclude that the notice requirement is satisfied where, as here, a prospective tenant is given notice of the rent ceiling prior to executing a lease.

Housing Provider did not comply with this directive. For reasons I discuss below in my analysis of remedies, I conclude that Tenant is entitled to a rent refund and roll back to compensate for Housing Provider's demand of these illegal rent increases.

For similar reasons, I conclude that Housing Provider's $67 increase in February 2007 is also illegal. Housing Provider's Notice of Increase in Rent Charged states that the rent increase was attributable to the adjustment of general applicability for the 2006 – 2007 rent control year. PX 116. But the Rent Administrator records show that Housing Provider failed to file a Certificate of Election of Adjustment of General Applicability to document the rent increase, as required by the Rental Housing Regulations. PX 120; 14 DCMR 4204.10.[7] Housing Provider also failed to file a sample copy of the Notice of Increase in Rent Charged and an affidavit of service of the Notice. 14 DCMR 4205.4(d). It follows that Housing Provider's February 2007 Rent Increase is illegal because Housing Provider failed to take and perfect the adjustment in accord with the regulations. *See Sawyer Prop. Mgmt., Inc. v D.C. Rental Hous. Comm'n*, 877 A.2d at 104.

The Notice of Increase in Rent Charged for the February 2007 Rent Increase stated that Tenant's current rent charged was only $1,079, the amount of Tenant's rent prior to implementation of the August 2006 Rent Increase. PX 116. This statement bears on the issue of whether Housing Provider ever withdrew its demand for the August 2006 Rent Increase. Ms.

[7] The regulation, which was promulgated before the 2006 amendment of the Rental Housing Act, requires a housing provider to file a Certificate of Election of Adjustment of General Applicability to take and perfect an adjustment to the rent ceiling. 14 DCMR 4206. Rent ceilings were abolished by the Rent Control Reform and Amendment Act of 2006, which amended the Rental Housing Act to provide that permissible rent ceilings would be based on the present rent charged for a housing unit, rather than the rent ceiling. *See* 53 D.C. Reg. 4489 (Jun. 23, 2006). The Rental Housing Commission has not amended its rules to reflect the 2006 amendment, but I will interpret 14 DCMR 4206.4 and the other Rental Housing Regulations in light of the amendment to refer to the rent charged rather than the rent ceiling.

Notsch testified, without contradiction, that Housing Provider never withdrew its demand, although Tenant did not pay the rent increase and Housing Provider did not take legal action to enforce the rent increase. But, because the Notice of Increase in Rent Charged for the February 2007 Rent Increase is a legal document that is binding on Housing Provider, I conclude that Housing Provider withdrew its demand on December 28, 2006, by acknowledging Tenant's proper rent to be $1,079. As I discuss below, Housing Provider's withdrawal of its demand has a significant effect on Tenant's award.[8]

The remaining rent increase challenged in the tenant petition involved an adjustment of general applicability. The $29 rent increase effective on December 1, 2004, was implemented through service of a Notice of Increase in Rent Charged, served more than 30 days before the rent increase took effect, and containing the information required by the Housing Regulations. 14 DCMR 4204.4; PX 112. It was based on an adjustment of general applicability documented with the Rent Administrator by filing a Certificate of Election of Adjustment of General Applicability within 30 days of the effective date of the adjustment. PX 147. Housing Provider documented service of the Notice of Increase in Rent Charged by filing an affidavit of service with the Rent Administrator within 30 days of service of the Notice. 14 DCMR 4205.4(d); 14 DCMR 4204.10. PX 120 ¶ 59. Accordingly, I conclude that the December 2004 rent increase was appropriate and legal.

Housing Provider's Amended Registration statements of September 30, 2005, and October 27, 2005, which purported to implement rent ceiling vacancy adjustments, were clearly

[8] Had Housing Provider not withdrawn the August 2006 Rent Increase the February 2007 increase would have been untimely under the 2006 amendments to the Rental Housing Act. The amended Act prohibits a housing provider from increasing the rent "until a full 12 months have elapsed since any prior increase." D.C. Official Code § 42-3502.08(g) (2007).

illegal because Tenant's apartment had not been vacant. PXs 137, 138. But Housing Provider corrected this mistake in its Notice of Increase in Rent Charged for the February 2006 Rent Increase, which stated Tenant's rent ceiling to be $1,451, the ceiling in place before the Amended Registrations were filed. PX 114. Because Housing Provider never sought to implement these illegal rent ceiling adjustments, I conclude that they have no bearing on the issues in Tenant's petition.

Based on this analysis, I make the following Conclusions of Law with respect to Tenant's claims concerning rent increases: (1) Tenant has proved that Housing Provider imposed three rent increases, in February 2006, August 2006, and February 2007, that were larger than the amount of increase allowed under the Rental Housing Act because they were illegal. (2) Tenant failed to prove that 180 days had not passed since the last rent increase. The February 2006 rent increase took effect 181 days before the August 2006 Rent Increase was to take effect. Housing Provider then rescinded the August 2006 Rent Increase before it sought to impose the February 2007 Rent Increase. (3) Tenant failed to prove that a proper 30 day notice of rent increase was not provided before any of the rent increases became effective. Housing Provider served Tenant a proper notice more than 30 days before each of the rent increase took effect. PXs 112, 114, 115, 116. (4) Tenant proved that Housing Provider failed to file the proper rent increase forms with the Rent Administrator. Housing Provider failed to file Amended Registrations to document the February 2006 and August 2006 rent increases, and failed to file a Certificate of Election of Adjustment of General Applicability and an affidavit of service to document the February 2007 Rent Increase. (5) Tenant failed to prove that the rent ceiling filed with the Rent Administrator is improper. Housing Provider's rent ceiling adjustment of March 2003 was

properly taken and perfected. The defect was in the implementation of the rent increase that arose out of the rent ceiling adjustment.

C. Tenant's Claims Involving Services and Facilities

Tenant's remaining claims involve the quality of services and facilities in her apartment. Tenant asserts that Housing Provider imposed rent increases while her unit was not in substantial compliance with the Housing Regulations, and that services and facilities provided in connection with her rental unit were permanently eliminated or substantially reduced.

To establish that a rent increase was implemented while the rental unit was not in substantial compliance with the housing code Tenant must show the existence of violations and that they were substantial. Certain violations are presumed to be substantial under the Rental Housing Regulations, including frequent lack of hot water, defective drains, accumulation of garbage or rubbish in common areas, and plaster falling or in immediate danger of falling, 14 DCMR 4215.2.

The rent increases that are involved in this tenant petition were effective in December, 2004, February 2006, August 2006, and February 2007. Although Tenant experienced various problems with the plaster and paint in her bedroom and bathroom through September 2006, when Housing Provider made repairs, there is no evidence to suggest that any of these problems amounted to a substantial housing code violation. Indeed, Inspector Butler testified that, in his opinion, the violations that he observed in August, 2006 were minor in nature. Inspector Smoot testified that he observed no violations of the fire code.

The other problems that Tenant experienced were either episodic or insubstantial. Although Ms. Notsch testified that the radiator in her living room did not work, she only complained about it once, and she acknowledged that it worked for a period of time after Housing Provider repaired it. Similarly, she only lodged a single complaint about the problem with her oven, which was fixed according to Housing Provider maintenance records. PX 145. Although Ms. Notsch testified that she had continuing problems with her kitchen sink and was reluctant to use it on occasion, the problem was intermittent and Housing Provider responded to Tenant's complaints when the sink backed up. PXs 111, 145. Ms. Notsch testified about intermittent clutter in the trash room but she admitted that she did not complain to management about the problem. There was no evidence that any of these conditions existed at the time any of the rent increases was implemented. I conclude, therefore, that Tenant failed to prove that Housing Provider implemented a rent increase while the building was not in substantial compliance with the Housing Regulations.

Evaluating Tenant's claims for substantial reduction in services and facilities is problematic. To establish a claim for reduction in services and facilities, Tenant "must present competent evidence of the existence, duration, and severity of the reduced services." *Jonathan Woodner Co. v. Enobakhare*, TP 27,730 (RHC Feb. 3, 2005) at 11 (citations omitted). "Further, if the reduced service is within the tenant's unit she must show that she notified the housing provider that service was required." *Id.* (citation omitted). *Accord, Hudley v. McNair*, TP 24,040 (RHC June 30, 1999) at 11. It is clear that Tenant experienced continuing problems with peeling paint and plaster throughout 2005 and 2006. But it is hard to quantify these problems or to establish the dates during which they existed. The work requests relating to Tenant's apartment confirm the existence of peeling paint in the bathroom as early as November

29, 2004. PX 145. The problem was not resolved until August 11, 2005. PX 149. Based on Tenant's testimony, and work requests on November 29, 2004, January 6, 2005, May 2, 2005, and June 6, 2005, that make reference to need to paint the bathroom, I conclude that the resulting reduction in facilities was substantial and existed for nine months from December 2004 through August 2005.

Evidence of the existence, duration, and severity of a reduction in services and facilities is competent evidence upon which an Administrative Law Judge can find the dollar value of a reduction in rent ceiling or rent roll back. Expert or other direct testimony is not required. *Norman Bernstein Mgmt., Inc. v. Plotkin*, TP 21,282 (May 10, 1989). I find the dollar value of the reduction in facilities attributable to the paint problems in Tenant's bathroom to be $50 per month.

I conclude that Tenant has not sustained her burden of proof to establish that the other problems in her apartment constituted a substantial reduction in services and facilities. Although Tenant's sink clogged on multiple occasions, the work requests and e-mail correspondence indicate that Housing Provider responded to Tenant's complaints and cleared the sink each time. PXs 111, 145. Tenant testified that, after the flooding incident in March 2006, she stopped complaining about the sink. Housing Provider also responded when Tenant complained of problems with the radiator in her living room, and her stove. PX 145. The first record of any problem with the paint in Tenant's bedroom is a work order of September 26, 2006, prepared in response to Inspector Butler's report following his inspection in August. PX 145. After being apprised of the problem, Housing Provider plastered and painted the affected areas. In sum, Tenant has not proved that Housing Provider was given proper notice of these problems or presented sufficient proof of their existence, duration, and severity to form a basis for an award.

D. Remedies

Prior to its amendment in August 2006, the Rental Housing Act provided for award of a rent refund "for the amount by which the rent exceeds the applicable rent ceiling . . . and/or for a roll back of the rent to the amount the [Administrative Law Judge] determines." D.C. Official Code § 42-3509.01(a) (2001). The Rental Housing Commission has consistently interpreted the statute to limit the remedy for reduced services and facilities to a reduction in the rent ceiling, limiting rent reductions to cases in which the rent charged exceeded the reduced rent ceiling. *Jonathan Woodner Co. v. Enobakhare*, TP 27,730 (RHC Feb. 3, 2005) at 14; *Kemp v. Marshall Heights Cmty. Dev.*, TP 24,786 (RHC Aug. 1, 2000) at 8; *Hiatt Place P'ship v. Hiatt Place Tenants' Ass'n*, TP 21,249 (RHC May 1, 1991) at 26.

By contrast, the Commission has held that rent refunds are appropriate to compensate Tenants for illegal rent increases imposed when the Housing Provider is not properly registered, irrespective of the rent ceiling. *See Grayson v. Welch*, TP 10,878 (RHC June 30, 1989) at 13 ("if the rent charged was increased at a time when landlord was not properly registered, each such increase can be held to be illegal, whether or not the increase brought the rent charged above the rent ceiling"); *McCulloch v. D.C. Rental Hous. Comm'n*, 449 A.2d 1072, 1073 (D.C. 1982) (affirming hearing examiner's award of rent refund under the 1977 Rental Accommodations Act where the landlord failed to file amended registrations to document rent increases). *Cf. Sawyer v. D.C. Rental Hous. Comm'n*, 877 A.2d at 111, n. 15 (holding that the housing provider's failure to file a timely amended registration statement to document a vacancy rent ceiling adjustment invalidated a subsequent rent increase based on that adjustment). I therefore hold that Tenant is entitled to a refund of the February 2006 and February 2007 rent increases demanded by and paid to Housing Provider. The refund includes all demands and/or payments through the date of

the hearing. *See Mann Family Trust v. Johnson*, TP 26,191 (RHC Nov. 21, 2005) at 16; *Jenkins v. Johnson*, TP 23,410 (RHC Jan. 4, 1995) at 9. *See also Majerle Mgmt., Inc. v. D.C. Rental Hous. Comm'n*, 866 A.2d 41, 43 (D.C. 2004) (affirming Rental Housing Commission award of rent refund damages through date of hearing).

It is well-established that a tenant is entitled to a rent refund in circumstances where the Housing Provider demands rent illegally, notwithstanding that the rent is not paid. *See* D.C. Official Code § 42-3501.03 (28) (defining "rent" as money "demanded" by a housing provider; *Kapusta v. D.C. Rental Hous. Comm'n*, 704 A.2d 286, 287 (D.C. 1997) (affirming award of rent refund where rent was demanded but not paid); *Schauer v. Assalaam*, TP 27,084 (RHC Dec. 31, 2002) at 6. (holding that tenant's rent refund was based on the amount demanded rather than the amount paid under a court protective order). Thus, Tenant is also entitled to a refund of the August 2006 rent increase that Housing Provider demanded, even though Tenant did not pay this rent increase. But the refund for the August 2006 rent increase demand will be limited to the five months between August 2006, and December 2006, when Housing Provider's Notice of Increase in Rent Charged gave notice that Housing Provider no longer demanded the previous rent increase. PX 116.

The available remedies do not justify a refund to Tenant on account of her reduction in facilities. Because Housing Provider properly took and perfected the rent ceiling increases of March 2003 (PX 131), August 2003 (PX 130), August 2004 (PX 147), the rent ceiling between December 2004 and August 2005, during which Tenant's facilities were reduced, was $1,415. I have reduced this rent ceiling by $50 per month during that period on account of the peeling paint and plaster in the bathroom. But the reduced rent ceiling of $1,365 is still substantially

higher than the $1,029 rent that Tenant was paying at the time. Therefore Tenant will not receive any rent refund on this account.

The record also provides no basis for an award of treble damages for bad faith or a fine against Housing Provider for a willful violation of the Rental Housing Act. A finding of bad faith requires proof that Housing Provider acted out of "some interested or sinister motive" involving "the conscious doing of a wrong because of dishonest motive or moral obliquity." *Third Jones Corp. v. Young,* TP 20,300 (RHC Mar. 22, 1990) at 9. Fines, for a willful violation of the Rental Housing Act, require a determination that the Housing Provider intended to violate the law and possessed a culpable mental state. *Quality Mgmt., Inc. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 76, n. 6 (D.C. 1986). Moreover, the Rental Housing Commission has held that a fine may not be imposed as a remedy for a claim of reduction in services. A rent refund is the only remedy permitted by the statute. *Schauer v. Assalaam,* TP 27,084 at 14-15 (RHC Dec. 31, 2002) (citing D.C. Official Code § 42-3509.01(a) (2001).

The acts that justify a rent refund in this case are Housing Provider's failure to file Amended Registration statements to document the rent increases it imposed in February and August 2006, and its failure to file a Certificate of Election of Adjustment of General Applicability and affidavit of service to document the February 2007 Rent Increase. There is no evidence that these acts and omissions were provoked by any dishonest motive or were intentional. Housing Provider employed an outside consultant, Mr. Santomartino, because his firm specialized in complying with the filing requirements of the Act. Housing Provider had no reason to believe that its rent increases were inappropriate.

E. Tenant's Award

Tenant is entitled to a refund of Housing Provider's illegal $50 rent increase from its effective date, February 1, 2006, through the date of the hearing, March 21, 2007, and a refund of Housing Provider's illegal $67 increase from its effective date, February 1, 2007, through the date of the hearing. Tenant is entitled to a refund of Housing Provider's illegal $272 rent increase from its effective date, August 1, 2006, through December 31, 2006. Therefore, I award Tenant a rent refund of $700 to compensate for the illegal February 2006 Rent Increase ($50 x 14 months) and a rent refund of $1,360 to compensate for the illegal August 2006 Rent Increase ($272 x 5 months), and a rent refund of $134 to compensate for the illegal February 2007 Rent Increase ($67 x 2 months).[9] Tenant's total rent refund is $2,194.

The Rental Housing Commission Rules provide for the award of interest on rent refunds at the interest rate used by the Superior Court of the District of Columbia from the date of the violation to the date of issuance of the decision. 14 DCMR 3826.1 – 3826.3; *Marshall v. District of Columbia Rental Hous. Comm'n*, 533 A.2d 1271, 1278 (D.C. 1987). The schedule below, computes the interest due on each month's overcharge at the five percent interest rate set for judgments of the Superior Court of the District of Columbia on the date of the decision.

[9] I do not pro rate the illegal March 2007 rent charges to the date of the hearing because the lease provides that the rent is due and payable on the first of the month. PX 101, ¶ 3B. On the date of the hearing, therefore, Housing Provider had demanded the entire amount of the March 2007 illegal rent increases.

Interest Chart
TP 28,690
Date of Violation February 1, 2006, through
Date of OAH Decision March 14, 2008

A	B	C	D	E	F
Dates of Overcharges	Amount of Overcharge	Months Held by Housing Provider[10]	Monthly Interest Rate	Interest Factor (CxD)	Interest Due (BxE)
Feb. 2006	$50.00	25.6452	.0042	.1069	$5.34
Mar. 2006	$50.00	24.6452	.0042	.1027	$5.13
Apr. 2006	$50.00	23.6452	.0042	.0985	$4.93
May 2006	$50.00	22.6452	.0042	.0944	$4.72
June 2006	$50.00	21.6452	.0042	.0902	$4.51
July 2006	$50.00	20.6452	.0042	.0860	$4.30
Aug. 2006	$322.00	19.6452	.0042	.0819	$26.36
Sep. 2006	$322.00	18.6452	.0042	.0777	$25.02
Oct. 2006	$322.00	17.6452	.0042	.0735	$23.67
Nov. 2006	$322.00	16.6452	.0042	.0694	$22.33
Dec. 2006	$322.00	15.6452	.0042	.0652	$20.99
Jan. 2007	$50.00	14.6452	.0042	.0610	$3.05
Feb. 2007	$117.00	13.6452	.0042	.0569	$6.65
Mar. 2007	$117.00	12.6452	.0042	.0528	$6.16
Total					**$163.17**

Tenant's total award is $2,357.17, the sum of the rent overcharges and interest.

F. Rent Roll Back

In addition, the Rental Housing Act provides for a roll back of illegal rent increases. D.C. Official Code § 42-3509.01(a) *Sawyer Prop. Mgmt. v. Mitchell*, TP 24,991 (RHC Oct. 31, 2002) at 2, 28, *aff'd, Sawyer Prop Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96 (2005) at 2, 23 (affirming roll back imposed by hearing examiner); *Redmond v. Majerle Mgmt., Inc.*,

[10] The interest component for March 2008 is pro rated to the date of the decision, March 20, 2007. (20/31 = .6452).

TP 23,146 (RHC Mar. 26, 2002) at 48. Accordingly, I direct a roll back of Tenant's rent to $1,029 as of the date of the hearing. This is the rent that Tenant paid in January, 2006, prior to the three illegal rent increases.

IV. Order

Therefore, it is this **20th** day of **March, 2008:**

ORDERED, that Tenant Petition No. 28,690, is **GRANTED IN PART AND DENIED IN PART**; and it is further

ORDERED, that Housing Provider Carmel Partners pay Tenant Lorna Notsch **TWO THOUSAND, THREE HUNDRED, AND FIFTY-SEVEN DOLLARS AND SEVENTEEN CENTS ($2,357.17)**; and it is further

ORDERED, that Tenant's rent is rolled back to **ONE THOUSAND AND TWENTY-NINE DOLLARS ($1,029)** per month, as of March 21, 2007, and it is further

ORDERED, that either party may move for reconsideration of this Final Order within ten business days under OAH Rule 2937.1, 1 DCMR 2937.1; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Final Order are stated below.

__/s/_____
Nicholas H. Cobbs
Administrative Law Judge